

tional absolute estate in the whole, the plaintiff then openly avowed her determination to make no will; to die intestate, and to leave her property to pass and be distributed according to law. The defendant admits these facts; but alleges and insists, that four of her sisters having been amply provided for by the late Thomas C. Deye their uncle, the plaintiff promised the late John C. Owings, the defendant's father, that she would give her estate to the defendant. In consequence of which, and in confident reliance upon that promise, her father made his will, in the manner he did, leaving the defendant nothing more than a mere token of his affectionate recollection. And the defendant avers, that the deed of the 15th of June, 1824, was made with a view to and in fulfilment of that promise.

From the proofs it appears; that John C. Owings and the plaintiff his wife during their marriage had eight children, who survived him; and that he had a large estate consisting of real and personal property within this State and elsewhere; that his uncle the late Thomas C. Deye, was seized of a considerable real estate; which by his last will he devised to four of the daughters of his nephew John C. Owings, each of whose share contained from four hundred and fifty to six hundred acres of land, the least of which was estimated as worth about \$16,000; that John C. Owings, the late husband of the plaintiff, by his will, and otherwise, gave the whole of his real and personal estate to his two sons Thomas D. Owings and John C. Owings; except some personalty, which he gave to his wife, and some other property, which he gave to his daughters in payment of a debt he owed them. The property he gave to his son Thomas is said to have sold for \$20,000.

In his will the late John C. Owings, the father of the defendant, says—"I give to my daughter Charlotte Deye Owings a family Bible and a spinning wheel as a token of my affection, it being my *desire and expectation, that her mother will provide for her, she having fully in her power to do so. Item. I give **399** unto my four daughters Mary C. Nesbit, Charcilla Cockey Deye Owings, Penelope D. Price, and Frances Thwaites Deye Owings, one family Bible each, they having been heretofore provided for by my uncle the late Thomas Cockey Deye."

Thus it appears to have been the intention of the testator John C. Owings so to dispose of his property as that the provision for each of his children, noticed in his will, should be entirely or nearly equal. That is, of his eight children, he himself provided for two; his uncle had portioned four; and a seventh he left to be provided for by her mother. Of his eighth child, Cassandra, he takes no notice in his will; she had married, disposed of herself, and was then resident at a great distance from him. It appears in proof, that the "desire and expectation," thus expressed by this testator, and the exclusion of his daughter Charlotte from any